

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

ROBERT BAUGHER, d/b/a SOUTH BEACH
CONSTRUCTION, INC., COCOA BEACH
MOTEL, INC., etc.¹

Employer

and

UNITED BROTHERHOOD OF CARPENTERS &
JOINERS OF AMERICA LOCAL 1765, AFL-CIO

Petitioner

Case 18-RC-16621
(formerly 12-RC-8474)

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. “Robert Baugher, d/b/a South Beach Construction, Inc., Cocoa Beach Motel, Inc., etc.” is asserted by the Petitioner to be the Employer in this proceeding. Petitioner’s counsel

¹ At the conclusion of the hearing, the Petitioner amended its petition to assert as the Employer “Robert Baugher, d/b/a South Beach Construction, Inc., Cocoa Beach Motel, Inc., etc.” instead of “South Beach Construction, Inc.” This amendment was allowed by the hearing officer.

stated at the hearing that it was Petitioner's position that all of the various entities owned or controlled by Bob Baugher were a single employer. In response to the hearing officer's question at the conclusion of the hearing, Petitioner's counsel stated that the Petitioner sought to represent "All carpenters and carpenter helpers who work for Bob Baugher." As will be explained further herein, the record contains insufficient evidence to conclude that Robert Baugher as an individual is the employer of the employees in the unit sought by the Petitioner. Further, the evidence is insufficient to conclude that Robert Baugher as an individual is an employer engaged in commerce within the meaning of the Act. However, the record evidence does establish that Cocoa Beach Motel, Inc., d/b/a Radisson Resort at the Port, and South Beach Construction, Inc., are employers engaged in commerce within the meaning of the Act.²

3. The labor organization involved claims to represent certain employees of the Employer.

² Cocoa Beach Motel, Inc., d/b/a Radisson Resort at the Port is a Florida corporation with an office in Cocoa Beach, Florida, and place of business in Cape Canaveral, Florida, where it is engaged in the operation of a hotel. During the calendar year ending December 31, 1999, Cocoa Beach Motel, Inc., d/b/a Radisson Resort at the Port derived gross revenues in excess of \$1 million. During that same period, Cocoa Beach Motel, Inc., d/b/a Radisson Resort at the Port purchased and received goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Florida.

South Beach Construction, Inc. is a Florida corporation with an office in Cocoa Beach, Florida, and place of business in Cape Canaveral, Florida, where it is engaged in the construction of a hotel facility. During the calendar year ending December 31, 1999, South Beach Construction, Inc. performed services valued in excess of \$1 million for Cocoa Beach Motel, Inc., d/b/a Radisson Resort at the Port.

In concluding that South Beach Construction, Inc. is an employer engaged in commerce within the meaning of the Act, I reject its contention, which was made at the hearing but not in its post-hearing brief, that it does not derive "revenues" from Cocoa Beach Motel, Inc., d/b/a Radisson Resort at the Port, but merely "passes through" monies that it is reimbursed for payroll expenses. If this contention were correct, jurisdiction over any employer that performs services pursuant to a "cost plus" contract would have to be determined without regard to payroll expenses. In any event, the record clearly establishes that South Beach performed services valued in excess of \$1 million for Cocoa Beach Motel, Inc., d/b/a Radisson Resort at the Port; and that Cocoa Beach Motel, Inc., d/b/a Radisson Resort at the Port is itself an employer engaged in commerce within the meaning of the Act. Accordingly, the Board has jurisdiction over South Beach Construction, Inc. regardless of whether it derived "revenues" from Cocoa Beach Motel, Inc., d/b/a Radisson Resort at the Port.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner originally sought to represent a unit of carpenters and carpenter helpers employed by South Beach Construction, Inc. (SBC). At the time of the hearing, SBC was engaged in the construction of an 84-unit expansion of the Radisson Resort at the Port in Cape Canaveral, Florida. This project, which involves the construction of three new buildings, was undertaken by SBC pursuant to a contract with Cocoa Beach Motel, Inc., d/b/a Radisson at the Port (CBM). Robert Baugher is the sole shareholder of both SBC and CBM.³ The position of SBC, and presumably that of CBM and Robert Baugher, is that the petition should be dismissed because there is no basis on which to assert jurisdiction over the entity asserted to be the Employer in the petition as amended at the hearing. SBC further argues that even if jurisdiction may be asserted, the petition still must be dismissed because the work has been completed and there is no further work for the petitioned-for carpenters; and that therefore no useful purpose would be served by the direction of an election in this matter. At the conclusion of the hearing, SBC filed a motion to dismiss the petition in which it contends that the Radisson project is its first and only project; that it does not have now, nor will it have in the future, any additional projects; and that the employee complement employed at the time of the hearing will be substantially or completely eliminated by about March 30, 2000.

SBC Supervisor James Peoples, who is actually employed by Cocoa Beach Motel, Inc., testified that SBC does not sell its services to any other company and has not performed

³ Baugher also has sole or controlling ownership in “ten to twenty” additional corporations, including medical research companies and development and real estate companies. The record is silent as to whether these additional companies are employers engaged in commerce within the meaning of the Act.

contracting work for anyone or anything other than this project. It has no clients or customers, nor does it hold itself out to the public as seeking any. He stated that SBC writes payroll checks for its employees, who are construction workers, and is reimbursed directly by the corporate offices⁴ of Cocoa Beach Motel for those payroll expenses.

Peoples testified that management of SBC consists of Rick Halm, the project manager, and Jeff Connelly, working under Halm. These two coordinated the hiring and direction of the trades employees for the Radisson expansion project. Eric Rhodes and Greg Knight were the managers responsible for coordinating the work of the subcontractors on the project. Peoples testified that Baugher makes all final business decisions for the various businesses he owns.

Peoples further testified that the Radisson expansion project was nearing completion at the time of the hearing. Certificates of Occupancy (COs) have already been received for two of the three buildings and the CO for the third building is expected within days of the hearing.⁵ As Peoples described it, carpentry work diminished with the completion of each of the buildings:

So when you get most of the carpentry -- when you get a CO on one building, you still have a lot of carpentry work in the other two, but once you get down -- when you got two COs and two buildings are done and all the rough carpentry work, you know, I'm sure it has been -- the numbers have been dwindling for all the trades. Because I think at one time we had over a hundred employees and now we're down to ten or twelve.

According to Peoples, a "project is not a project any more once you get a CO, except to do a punchlist and cleanup." He stated that those tasks would only take two to three weeks to complete. Peoples denied that there was a reasonable expectancy of work for the carpenter

⁴ Robert Baugher apparently has various other businesses headquartered at this office, located at 2210 South Atlantic Avenue, Cocoa Beach, Florida.

⁵ Robert Baugher testified that he expected the completed Radisson expansion project to open to the public on Saturday, March 11, 2000, two days after the close of the hearing in this matter.

employees who had been, or were about to be, laid off from SBC. He testified that SBC had no other projects in existence, was not bidding on any others, and had no commitments at that time for any future projects. Peoples testified briefly about a project Baugher was contemplating for the future—a 48-unit Quality Suites hotel—but stated that no decision had been made about whether the project would be completely subcontracted out or built by employees of a new Baugher-related entity.

Robert Baugher also testified that no decision had been made in this regard, other than that the entity building the Quality Suites project would not be SBC. He testified that SBC will not have any construction projects following the completion of the Radisson expansion project. He stated:

My standard operating mode is set up a Company for the developing of a project and then close it out at the end of the project. And then have a development Company for the next project.

Baugher further testified that, as to the Quality Suites project, he had a May 1, 2000 deadline to get the foundation into the ground or he would lose his license to do so. He added that he is awaiting a bid from the architect/general contractor on how much it would cost to “get it into the ground and up to the first floor.” Baugher stated that, beyond that, he did not know when he was going to make a decision as to what corporation he was going to create to carry out the Quality Suites construction.

Several carpenters who had been laid off on February 25, 2000, from the Radisson expansion project also testified. These witnesses were Carpenters Union members who had been employed by SBC for periods ranging from three to 10 months. They testified that at the time of their hire, representatives of SBC, including Greg Knight, Jeff Connelly, Rick Halm, and Robert Baugher, had assured them that there would be “plenty of work” for them. Carpenter William

Baumgardner testified that Greg Knight told him there would be at least five years' worth of work on various hotel construction projects following the Radisson expansion project. Later on, as the work was starting to slow down, Connelly told Baumgardner that he didn't have to worry about not having work, because once the Radisson expansion was done, they were planning to remodel 10 units at a time at the old Radisson.

Carpenter John Clark similarly testified that Rick Halm told him that after the Radisson expansion project was finished, they would be remodeling 10 rooms a week on the existing Radisson facility, and after that starting on the next hotel project. Clark further testified that Baugher himself had discussed future work with him, stating that there was at least five years' worth of work out there. Carpenter Tom Springer testified that Connelly told him they had at least two years' worth of work ahead. Carpenter Mark Oropeza testified that Connelly had told him about two or three buildings to be done right after the Radisson expansion project, and that Baugher had talked about remodeling the existing Radisson facility.

These carpenter employees were laid off three days after the filing of the petition in this matter. They testified that they were told by Halm and Eric Robart that they (Halm and Robart) liked their work and that as soon as work started up again, they would hire them back. Clark testified that in addition to being told that, he was told by Connelly that everyone was being terminated and they were going to re-structure the company.

In contrast to that testimony, Halm and Connelly testified that while they had discussed Baugher's possible future plans with employees, nothing was specifically promised to employees with regard to future employment with SBC or any of Baugher's other enterprises. They testified that they did not have the authority to make such promises. Baugher testified that only he had any authority to make such promises, and that he made the decision to lay off the

carpenters because the work was coming to a close. Baugher added that this was true not only for carpenters, but for the other trades employees as well. Baugher testified that there is no remodeling going on at present, and no definite time is contemplated for it to commence in the future. He denied promising the laid-off carpenters any future employment with SBC or with any other of his companies. He testified that CBM employs no carpenters and he doesn't know if it will need any in the future.

On the basis of the foregoing and the record as a whole, I conclude that the record evidence is insufficient to establish that Robert Baugher is an employer engaged in commerce within the meaning of the Act; or that, even if he is, that he is the employer of the employees in the unit petitioned for. In reaching this conclusion, I have carefully considered the facts that Baugher is the sole shareholder of both SBC and CBM; and that SBC and CBM are employers engaged in commerce within the meaning of the Act. However, these are insufficient bases for concluding that Baugher is personally an employer engaged in commerce or that he is the employer of the employees the Petitioner seeks to represent. Cf. White Oak Coal Co., 318 NLRB 732 (1995), enf'd without published opinion 81 F.3d 150 (4th Cir. 1996).

I further conclude that, in any event, it would serve no useful purpose to direct an election in this matter. The record evidence is clear and un rebutted that the Radisson expansion project is on the verge of completion. Moreover, and even assuming that Baugher and others represented to the SBC carpenter employees that they would be employed on other projects in the future, the record provides no basis whatever for concluding that the Employer specified in the petition as amended at the hearing or any other presently identifiable employer would be the employing entity. Thus, on the basis of the evidence contained in the record, I conclude that those carpenters who have not already been laid off will be laid off within a month; and that they have

no reasonable expectation of recall by any presently identifiable employing entity. Accordingly, it would serve no useful purpose to direct an election in the unit petitioned for herein. Davey McKee Corp., 308 NLRB 839 (1992). In that case, the Board denied review of the Regional Director's Decision and Order dismissing the petition based on imminent completion of a construction project, projected to be within one month of the date of the representation hearing. The Regional Director found the petitioner's contention that the employer might secure additional work through bids to be conjectural. In that case, as here, the evidence established that the employer had no other ongoing construction projects, or bids out on such projects, within the geographical scope of the unit. When, as here, an employer's operations are scheduled to terminate within a month of the date of the representation hearing, no useful purpose would be served by directing an election. Id. at 840. See also Fish Engineering & Construction, 308 NLRB 837 (1992); and M.B. Kahn Construction Co., 210 NLRB 1050 (1974).

ORDER⁶

On the basis of the foregoing, I conclude that the motion filed by South Beach Construction, Inc. to dismiss the petition should be granted. Accordingly, IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

⁶ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **April 14, 2000**.

Signed at Minneapolis, Minnesota, this 31st day of March, 2000.

/s/ Ronald M. Sharp

Ronald M. Sharp, Regional Director
Eighteenth Region
National Labor Relations Board

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